

User Agreement
No. «AgreementNumber»
BETWEEN
Sandia Corporation
(hereinafter "THE LABORATORY")
under the U.S. Department of Energy Contract No. DE-AC04-94AL8500
AND
«PartnersName»
(hereinafter "USER")

ARTICLE I: SCOPE OF SERVICES THE LABORATORY will make available to designated employees or representatives of the USER certain facilities, equipment, services, information and other material as described in Appendix A.

ARTICLE II: GENERAL DISCLAIMER The Government and THE LABORATORY make no expressed or implied warranty as to the condition of the research or any intellectual property or product made, or developed under this Agreement, or the ownership, merchantability or fitness for a particular purpose of the research or resulting product. Neither the Government nor THE LABORATORY will be liable for special, consequential or incidental damages.

ARTICLE III: COST Cost resulting from the Activity will be based on full cost recovery, including depreciation and DOE added factor. The total cost to the USER will not, without the USER's prior consent, exceed the estimated cost set forth in Appendix A. However, THE LABORATORY will have no obligation to continue the Activity if the actual cost of such performance will exceed said estimated cost. Further, the estimated cost will not operate as a cost limitation on the obligations and liabilities assumed by the USER under this Agreement. THE LABORATORY will provide notice as soon as reasonably practicable if the actual cost to complete the Activity will exceed the estimated cost so as to allow the USER to elect to provide additional funding without interruption of the Activity.

ARTICLE IV: BILLING Payment Terms.

(1) The user will pay THE LABORATORY the amount of «DollarValueWords» («DollarValueNumbers») upon receipt of THE LABORATORY's invoice. The initial invoice must be for 45 days in order to meet the DOE 15-day advance funding requirement. THE LABORATORY will invoice this amount after execution of the Agreement by both parties. THE LABORATORY will not begin work under this agreement until funds are received from the USER.

(2) THE LABORATORY will submit invoices to the USER to maintain the required 15-day advance funding balance. The USER will pay these monthly invoices within 30 calendar days after receipt until the USER's total for costs to be incurred by THE LABORATORY, «DollarValueWord2» («DollarValueNumber2»), is reached.

(3) When the total payments reach the USER's total contribution, THE LABORATORY will no longer invoice the USER. THE LABORATORY will continue to charge the funding balance until the account is depleted or the work is completed, whichever occurs first.

(4) Upon completion of the work or termination of this Agreement, THE LABORATORY will refund any account balance to the USER.

(5) The procedures for remitting payments to THE LABORATORY are contained in Appendix B of this agreement

ARTICLE V: ADMISSION REQUIREMENTS

Participants are subject to the administrative and technical supervision and control of THE LABORATORY; and will comply with all applicable rules of THE LABORATORY and DOE with regard to such Activity including safety, operating and health-physics

procedures, environment protection, access to information, hours of work, and conduct. The USER is required to obtain Agreements from each Participant as necessary to implement the provisions of the Agreement. Participants will not be considered employees of THE LABORATORY for any purpose.

ARTICLE VI: PROPERTY Unless the parties otherwise agree, all equipment and test apparatus procured with funds provided by the USER will be disposed of as directed by the USER. Any equipment which becomes integrated into the facility becomes the property of the Government.

ARTICLE VII: SCHEDULING The USER understands that THE LABORATORY will have sole responsibility and discretion for allocating and scheduling usage of the facilities, equipment, services, materials and information needed for or involved in the activity.

ARTICLE VIII: MATERIALS The USER acknowledges that any material supplied by the USER may be damaged, consumed or lost. Materials (including residues and/or other contaminated material) remaining after performance of the work or analysis will be removed in their then condition by the USER at the USER's expense. USER will return facilities and equipment utilized in their original condition except for normal wear and tear.

ARTICLE IX: INTELLECTUAL PROPERTY PROVISIONS The rights (as revised 7/20/95) of the parties in patents, technical data, copyrights and other intellectual property that may arise under this agreement are set forth in Appendix C of this agreement.

ARTICLE X: NONDISCLOSURE Protected TDC/UF Information shall not be disclosed by THE LABORATORY for a period of five years pursuant to Appendix C, Clause IV Sub-clause F.

ARTICLE XI: EXPORT CONTROLS The USER acknowledges that the export of goods or technical data from the United States may require some form of export control license from the U.S. Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

ARTICLE XII: RECORDS AND ACCOUNTING SYSTEM The USER will maintain records of receipts, expenditures, and the disposition of all Government property in its custody, related to the Agreement.

ARTICLE XIII: PRE-PUBLICATION REVIEW

A. The USER will secure pre-publication approval from THE LABORATORY which will not be unreasonably withheld or denied beyond 14 days.

B. The USER will not use the name of THE LABORATORY or the United States Government or their employees in any promotional Activity, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the Government.

DATE:

APPENDIX A
Statement of Work
To User Agreement No.
between
Sandia
and
«PartnersName»

Pursuant to the above identified User Agreement and subject to the terms and conditions stated therein, Sandia will provide, furnish, or otherwise make available to duly authorized employees or representatives of the USER the following facilities, equipment, services, material and/or information for the following purpose:

Purpose:

«SOWPurpose»

Term:

«SOWTerm»

Estimated Time of Use:

«SOWEstTimeUse»

Cost:

«SOWCostValueNumbers»

APPENDIX B
Billing
To User Agreement No.
between
Sandia
and
«PartnersName»

REMITTANCE:

A. The USER agrees that amounts due from the USER under this Agreement are the singular property of DOE from the outset. Sandia will receive payments from the USER solely as custodian for DOE. Sandia will deposit all USER proceeds in a DOE-owned bank account, as identified below. Checks will be endorsed by Sandia in favor of DOE.

B. Checks must be identified with User Agreement Number and should be made payable to "Sandia Corp. or DOE" mailed Federal Express to: Sandia National Laboratories; 1515 Eubank SE, Bldg. 957; Albuquerque, NM 87123. Address your Corporate (inside) envelope to: Sandia National Laboratories; Assistant Treasurer and Cash Management Department 10602; MS-0189; P.O. Box 5800; Albuquerque, NM 87185-0189. If checks are sent by regular mail, use the following address: Sandia National Laboratories; Assistant Treasurer and Cash Management Department 10602; MS-0189; P.O. Box 5800; Albuquerque, NM 87185-0189.

C. Electronic Funds Transfers should be directed to: "Sunwest Bank of Albuquerque, NA, #1070 00327, for Sandia Corporation Account No. 01-0002860-4." A payment advice identifying the User Agreement number, EFT date and amount should be mailed to Sandia National Laboratories, Assistant Treasurer and Cash Management Department 10602, MS-0189, P.O. Box 5800, Albuquerque, NM 87185-0189.

D. Payment Terms

(1) The USER will pay Sandia the amount of dollars (\$) upon receipt of Sandia's invoice to cover the entire period of the program. Sandia will invoice this amount after execution of the Agreement by both parties. Sandia will not begin work under the Agreement until the funds are received and certified.

D. Payment Terms <ALTERNATE 2>

(1) The USER will pay Sandia the amount of dollars (\$) upon receipt of Sandia's invoice to provide for the DOE 15-day advance funding requirement. The initial invoice must be for 45 days in order to meet the DOE 15-day advance funding requirement. Sandia will invoice this amount after execution of the Agreement by both parties. Sandia will not begin work under the Agreement until the funds are received.

(2) Sandia will submit invoices to the USER to maintain the required 15-day advance funding balance. The USER will pay these monthly invoices within 30 calendar days after receipt until the USER's total contribution for costs to be incurred by Sandia, dollars (\$) is reached.

(3) When the total payments reach the USER's total contribution, Sandia will no longer invoice the USER. Sandia will continue to charge the funding balance until the account is depleted or the work is completed.

(4) Upon completion of the work or termination of this Agreement, Sandia will refund any account balance to the USER.

(5) All costs incurred by Sandia under this Agreement and payable by the USER will be computed in accordance with Sandia's standard accounting practices.

(6) Payments are necessary to maintain a continuous 15-day advance funding balance until the final 15 days of the project as required by the DOE to continue Sandia's work on this Agreement. In the event that the USER's 15-day advance funding balance, for Agreement effort funded solely by the USER, falls below the advance funding requirement, work by Sandia must stop. Work may be resumed upon full replenishment of the 15-day advance funding plus sufficient funding beyond the 15-day requirement to fund 30 days of work.

NOTICES:

A. Any communications required by this Agreement, if given by postage prepaid first class U.S. Mail addressed to the party to receive the communication, will be deemed made as of the day of receipt of such communication by the addressee, or on the date given if by verified facsimile. Address changes will be given in accordance with this Article and will be effective thereafter. All such communications, to be considered effective, will include the number of this Agreement.

B. The addresses, telephone numbers and facsimile numbers for the parties are as follows:

1. For Sandia:

a. Formal Notices and Communications:

Mary Monson

Telephone: (505) 843-4183
Facsimile: (505) 843-4175
E-mail: mamonso@sandia.gov

For Fed Ex., UPS, Freight:
Sandia National Laboratories
1155 University Boulevard SE
Albuquerque NM 87106

-OR-

For U.S. Mail Only:
Mary Monson
Sandia National Laboratories
MS 1380
P. O. Box 5800
Albuquerque NM 87185-1380

b. Technical Contact, Reports, and Copies of Formal Notices and Communications:

Name: «AgreementNumber»
Telephone: «PIWorkPhone»
Facsimile: «PIFaxNumber»
E-mail: «PIemailaddress»

For Fed Ex., UPS, Freight:
Sandia National Laboratories
«PIMailStop»
Building 957
1515 Eubank Blvd. SE
Albuquerque NM 87123

For U.S. Mail Only:
Sandia National Laboratories
MS - 1380
P. O. Box 5800
Albuquerque NM 87185-1380

2. For «PartnersName»:

a. Technical Contact, Reports, and Formal Notices and
Communications:

Telephone: «PartnersWorkPhone»
Facsimile: «PartnersFaxNumber»

For Fed. Ex., UPS, Freight:
«PartnersName»
«Address1»
«CityStateZip»
«PartnersWorkPhone»

For U. S. Mail Only:
«PartnersName»
«Address2»
«CityStateZip»
«PartnersWorkPhone»

APPENDIX C
PATENTS AND TECHNICAL DATA CLAUSES
FOR TDC/UF AGREEMENTS

CLAUSE I PATENT AND COPYRIGHT INDEMNITY-LIMITED

The USER shall fully indemnify the Government and the M&O Contractor and their officers, agents, and employees for infringement of any United States patent or copyright arising out of any acts required or directed by the USER to be performed under the Agreement to the extent such acts are not normally performed at the facility.

CLAUSE II NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The USER shall promptly report and provide reasonable assistance to the Government concerning each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the USER has knowledge.

CLAUSE III INVENTION RIGHTS

A. Definitions

1. "M&O Contractor" means the Operating Contractor which manages and operates the Government-owned, contractor-operated facility where the work under this Agreement is to be performed.

2. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U. S. C. 2321 et seq.).

3. "USER Invention" means any Invention of the USER conceived or first actually reduced to practice in the course of or under this Agreement.

4. "M&O Contractor Invention" means any Invention of the M&O Contractor, conceived in the course of or under this Agreement.

5. "Patent Counsel" means the DOE Counsel for Intellectual Property assisting the DOE Contracting activity.

B. M&O Contractor's Rights

The M&O Contractor may elect title to any M&O Contractor Invention according to the provisions of the M&O Contract.

C. USER's Rights

Subject to the provisions herein, the USER may elect title to any USER Invention and in any resulting patent secured by the USER.

D. Rights of Government

1. The USER agrees to timely assign to the government the entire right, title, and interest in any country to each USER Invention where the USER:

a. Does not elect pursuant to Appendix C to retain such rights; or

b. Fails to timely have a patent application filed in that country on the USER Invention or decides not to continue prosecution or not to pay the maintenance fees covering the invention; or

c. At any time, the USER no longer desires to retain title.

2. The USER shall provide the Government a copy of any application filed on a USER Invention promptly after such application is filed, including its serial number and filing date.

3. The USER hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the USER Invention throughout the world.

4. The USER acknowledges that the DOE has certain March-in Rights to any inventions in accordance with 48 CFR 27. 304-1(g).

5. USER agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to any Invention or discovery regardless of when conceived or actually reduced to practice or acquired by the USER, which is incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the Agreement.

6. The USER agrees to submit on request periodic reports to DOE no more frequently than annually on the utilization of a USER Invention or on efforts to obtain such utilization that are being made by the USER or its licensees or assignees.

E. Invention Report and Election

1. The USER shall furnish the Patent Counsel a written report containing full and complete technical information concerning each USER Invention within six months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use, or publication of such invention known to the USER. If USER wishes to elect title to the Invention, such report shall contain USER's notice of election of title.

2. The M&O Contractor's contract with DOE requires that inventions of the M&O Contractor will be reported to DOE. In addition, the M&O Contractor agrees to disclose to the USER any M&O Contractor Inventions promptly.

F. Preference for United States Industry

Notwithstanding any other provision of this clause, the USER agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any USER Invention in the United States unless such person agrees that any products embodying the USER Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an Agreement may be waived by DOE upon a showing by the USER or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

CLAUSE IV - RIGHTS IN TECHNICAL DATA

A. Definitions:

1. "Technical Data" as used herein means recorded information of a scientific or technical nature including computer software.
2. "Proprietary Data" means technical data which embody trade secrets developed at private expense, outside of this Agreement, provided that such data:
 - a. Are not generally known or available from other sources without obligation concerning their confidentiality,
 - b. Have not been made available by the owner to others without obligation concerning their confidentiality, and
 - c. Are not already available to the M&O Contractor or the Government without obligation concerning their confidentiality.
3. "Unlimited Rights" means rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.
4. "Protected TDC/UF Information" means information generated in the performance of this Agreement which is marked as being TDC/UF Protected Information by the USER or the M&O Contractor and which could have been Proprietary Data had it been obtained from a non-Federal entity outside of this Agreement.

B. The USER agrees to furnish to the M&O Contractor those data, if any, which are:

1. essential to the performance of work under this Agreement by the M&O Contractor personnel, or
2. necessary for the health and safety of such personnel in the performance of the work. Any data furnished to the M&O Contractor shall be deemed to have been delivered with Unlimited Rights unless marked as "Proprietary Data" of the USER.

C. The USER agrees to deliver to DOE a nonproprietary description of the work to be performed under the Agreement.

D. All Technical Data produced in the performance of work under this Agreement by the M&O Contractor shall, prior to any dissemination, publication, or further disclosure of the data be made available to the USER for review and appropriate marking where such data contain or would disclose the USER's Proprietary Data. The Government has the right to challenge the proprietary nature of any markings on data.

E. The Government is required by law not to disclose properly marked Proprietary Data of the USER outside the Government and the M&O Contractor. The M&O Contractor agrees not to use or disclose such Proprietary Data except when necessary for the performance of this Agreement and compliance with the M&O Contract.

F. Either the USER or the M&O Contractor may designate as TDC/UF Protected Information Technical data produced by its employees, and with the Agreement of the other party, information produced by the other party's employees. All such information shall be appropriately marked. For the period of time indicated in Article X of the USER Agreement, which shall not exceed five years from the date the information is produced, neither the USER nor the M&O Contractor shall further disclose marked TDC/UF Protected Information except:

1. as necessary to perform this Agreement;
2. as required by the Government on-site;

3. as necessary to comply with court order; or

4. as otherwise required by law.

G. The M&O Contractor and USER will cooperate to separate USER's Proprietary Data from that data generated under the Agreement so that USER may remove its Proprietary Data. Subject to paragraph F. above, the Government shall have Unlimited Rights in any Technical Data (including Proprietary Data) which are not removed from the facility by or before termination of the Agreement. Subject to paragraph F. above, the Government shall have Unlimited Rights in any Technical Data and any Proprietary Data which are incorporated into the facility or equipment under the Agreement to such extent that the facility or equipment is not restored to the condition existing prior to such incorporation. Subject to paragraph F. above, the M&O Contractor shall have the unlimited right to perform similar or identical services for other USERS at any time as long as the USER's Proprietary data are not utilized.

H. The USER shall grant to the Government and others acting on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for Government purposes to publish, distribute, create derivative works, translate, duplicate, exhibit, and perform any technical data first produced in the performance of this Agreement in which the USER is the author of any copyrightable expression of such technical data.

(Appendix C revised 7/20/95 Approved by US DOE Patent Counsel)